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NATIONAL INDIAN GAMING COMMISSION

3

CLASS II CLASSIFICATION STANDARDS

4

GOVERNMENT-TO-GOVERNMENT CONSULTATION MEETING

5

WITH THE STAND ROCK SIOUX NATION

6

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HELD IN OKLAHOMA CITY, OKLAHOMA

8

ON AUGUST 9, 2006

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REPORTED BY: TRENA K. BLOYE, CSR

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## 1 A P P E A R A N C E S

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## 4 NATIONAL INDIAN GAMING COMMISSION:

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6 Philip N. Hogen, Chairman

7 Cloyce "Chuck" V. Choney, Commissioner

8 Natalie Hemlock, Special Assistant to the

9 Commission

10 Penny Coleman, Acting General Counsel

11 Michael Gross, Senior Attorney

12 John R. Hay, Staff Attorney

13 Joseph M. Valandra, Chief of Staff

14 Tim Harper, Region Chief, Region V

15 Marcy Pate Olber, Senior Field Investigator

16 Jeanette Ross, Field Investigator

17

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## 19 ON BEHALF OF THE STANDING ROCK SIOUX NATION:

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21 Archie Foul Bear

22 Matt Lopez

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1 COMMISSIONER CHONEY: First of

2 all, welcome to Oklahoma to this Class II  
3 regulation consultation. For your  
4 information, this matter will be recorded.  
5 And once it's recorded it will be a matter of  
6 public record. And if you want to obtain a  
7 copy of the transcript, we will eventually, or  
8 as soon as we get the transcription released  
9 to us, we will put it on our website.

10 So, since it's a matter of public  
11 record, if there is any other matters you wish  
12 to discuss in regard to your tribe, you have  
13 to let us know and we will go off the record.  
14 I'm sure if it's a private tribal matter, you  
15 won't want to share it with everyone else, so  
16 we would have to go off the record.

17 Also for the record, by way of  
18 introduction, I will introduce Phil Hogen,  
19 chairman of the National Indian Gaming  
20 Commission. I am Chuck Choney, commissioner.  
21 And seated off to Phil's left is Penny  
22 Coleman, our acting general counsel. Michael  
23 Gross, Office of General Counsel.

24 Joe Valandra, our chief of staff;  
25 and John Hay, senior attorney, Office of

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1 General Counsel. And Natalie Hemlock stepped  
2 out for a moment. She's a special assistant

3 to the Commission.

4 And also for the record, if you  
5 could identify yourselves.

6 MR. LOPEZ: I'm Matt Strong Heart  
7 Lopez, councilman-at-large and on the HEW  
8 committee. But I'm also a liaison for the  
9 Grand River Casino and also elected as the  
10 Great Plains Representative.

11 MR. FOUL BEAR: Good morning. My  
12 name is Archie Foul Bear. I sit on the tribal  
13 council, councilman-at-large, for the Standing  
14 Rock Sioux Tribe. I sit on the Judicial  
15 Committee, many, many other boards. But I sit  
16 on the Judicial Committee. And we get an  
17 opportunity to review a lot of the regulations  
18 and have a chance to work with a lot of, I  
19 guess, updating our laws within the tribe. So  
20 that's me in one bundle right now. And I  
21 guess I will be giving some statement today.  
22 Thank you. Again, welcome.

23 COMMISSIONER CHONEY: Chairman  
24 Hogen.

25 CHAIRMAN HOGEN: Well, we are

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1 gathered here because on the 25th of May this  
2 year the NIGC published in the "Federal  
3 Register" some proposals, proposals to amend  
4 the definition and proposal to promulgate some

5 regulations that would, hopefully, better  
6 distinguish electronic and technologic aids  
7 that tribes can use to play uncompact Class  
8 II gaming from those electronic facsimiles of  
9 games of chance and slot machines of any kind  
10 that require tribal compacts with states for  
11 tribes to play.

12 We started this process some time  
13 ago. We formed a Tribal Advisory Committee.  
14 We published various versions of what we might  
15 intend on our website, and then we published  
16 these regulations this spring. We also worked  
17 on a set of technical regulations. And when  
18 we decided to put them on the website, we  
19 decided we better look at them again, because  
20 there was some technologic developments that  
21 we hadn't been aware of.

22 So we recently revised those, and  
23 this Friday we will publish on they web site,  
24 publish in the "Federal Register" those  
25 technical regulations that are a companion

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1 piece to these classification standards. The  
2 comment period for those technical regulations  
3 will conclude on the 30th of September. And  
4 we have extended the comment period for these  
5 classification standards to that time.

6                   On the 19th of September in  
7           Washington, DC we are going to hold a public  
8           hearing on this subject of classification and  
9           technical standards. We will have a number of  
10          panels that will have presenters. We will  
11          have some tribal presenters. We will have  
12          some regulators. We will some economic impact  
13          discussion. We will have manufacturers and  
14          vendors that make machines that tribes use  
15          presenting. And we will also have some  
16          representatives from states giving their point  
17          of view.

18                   So, at the end of that process,  
19          after we look at what's been said and what's  
20          been sent to us by way of comments after the  
21          30th of September, we will decide, are we  
22          going to go ahead with these regulations, and  
23          if so, what are they going to look like?  
24          Should we change what we proposed?

25                   Hopefully, when we are all done

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1          with this, there will be a better system to  
2          identify what tribes can and can't use when  
3          they want to do Class II gaming.

4                   So, having said that, we are eager  
5          to hear from the Standing Rock Sioux Tribe. I  
6          know you have got operations in two  
7          jurisdictions, that is North Dakota and South

8 Dakota, and some unique challenges in that  
9 connection. So we are eager to hear what you  
10 have to say.

11 MR. FOUL BEAR: Okay. Do I submit  
12 a copy of the testimony to you, then?

13 COMMISSIONER CHONEY: Yes. It  
14 will be made a part of the permanent record.

15 MR. FOUL BEAR: Okay. I guess I  
16 will start. Once again, good morning,  
17 Mr. Chairman and Commissioners. My name is  
18 Archie Foul Bear. I'm a tribal council  
19 representative for the Standing Rock Sioux  
20 Tribe. Also with me today, as introduced  
21 already is tribal councilman, Mr. Matt Strong  
22 Heart Lopez.

23 I appreciate having the  
24 opportunity to express my tribe's views  
25 regarding the National Indian Gaming

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1 Commissions' proposed new regulations on  
2 electronic Class II games. I also want to  
3 take this opportunity to express my tribe's  
4 concerns about the Commission's recently  
5 circulated draft regulations on the gaming  
6 licenses according to, I think it's 559-2.

7 The Standing Rock Sioux Tribe is  
8 operating gaming facilities on the reservation

9 under compacts with North Dakota and South  
10 Dakota, and a tribal gaming ordinance as  
11 authorized by IGRA. The gaming has provided  
12 much needed source of jobs on our reservation  
13 and has begun to provide us with a measure of  
14 resources to address the massive deficiencies  
15 we face in providing the health, education,  
16 and other needs of our people.

17 We believe the proposed  
18 regulations go far beyond what is needed or  
19 appropriate for federal oversight of tribal  
20 gaming. In our view these proposed  
21 regulations infringe on tribal sovereignty,  
22 exceeds the Commissions' authority under IGRA,  
23 and would only serve to limit tribal gaming in  
24 ways that could undermine tribal efforts to  
25 continue to meet tribal members' needs in the

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1 future.

2 We do want to commend the  
3 Commission in engaging in government-to-  
4 government it consultation. However, we want  
5 to be assured that this consultation is  
6 meaningful and not simply a cosmetic exercise.

7 True consultation requires the  
8 Commission consider the tribe's comments and  
9 the tribe's comments should impact the outcome  
10 of the agency's final decision. We will be



11 deeply disappointed if, after this  
12 consultation process and comment period, the  
13 regulations that the agency may ultimately  
14 issue that are no different from these draft  
15 regulations.

16               Regarding Class II regulations, it  
17 is unclear to us why the NIGC believes it  
18 needs to issue any more regulations. There  
19 have been a number of cases in federal court  
20 that have confirmed that congress did not  
21 intend to limit tribes to the most simplistic  
22 and rudimentary forms of bingo and similar  
23 games or prevent tribes from making the most  
24 of the current technology. However, the  
25 proposed regulations seem to be an effort to

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1 limit the tribe's rights as established by the  
2 courts to engage in modern Class II gaming.

3               As currently written, these  
4 regulations would significantly impact the  
5 fundamental characteristics of Class II games  
6 currently in use by tribes. It is likely that  
7 the more popular and profitable Class II games  
8 in use would no longer be permitted if these  
9 regulations went into effect. The law does  
10 not require such a result.

11               Related to our concern about Class

12 II regulations is a strong opposition to  
13 NIGC's draft regulations for facility  
14 licensing, certification -- and certification  
15 of Indian lands. These draft regulations are  
16 a wholesale affront to a tribe's sovereignty  
17 and our ability to regulate activities on our  
18 lands.

19 Moreover, many of the areas of  
20 NIGC is seeking to impose itself are areas  
21 not -- governed not only by tribal law but  
22 also by tribal state impacts. No additional  
23 law is needed in this area. In these draft  
24 regulations the NIGC would require tribes  
25 certify on an annual basis that our facilities

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1 are maintained and operated in a manner which  
2 adequately protects the environment and public  
3 health and safety.

4 However, nowhere in these draft  
5 regulations does NIGC offer any guidance for  
6 what is adequate or inadequate. Instead,  
7 these regulations appear to inject the NIGC  
8 into tribal law making without any legal basis  
9 for exercising judgment.

10 By way of example, many tribal  
11 facilities allow smoking on some parts of the  
12 gaming floor. This is true. Even places like  
13 Washington State where smoking is banned in

14 public places, including bars and restaurants.  
15 The Washington state ban was enacted as a  
16 public health measure.

17 With these proposed regulations,  
18 would the NIGC itself determine that smoking  
19 is an imminent threat to public health and  
20 require all tribes to ban smoking in our  
21 casinos? Tribes, like states, are best suited  
22 to determine which regulations are necessary  
23 to protect the people to enter into our lands  
24 and our facilities and we would have  
25 effectively addressed these issues through

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1 tribal law.

2 The NIGC is not in a position to  
3 determine what is the best interest of the  
4 Standing Rock Sioux Tribe or our customers.  
5 Sanding Rock Sioux Tribe finds the NIGC's  
6 efforts to regulate tribal gaming facilities  
7 for public health and safety are particularly  
8 offensive when we have federal facilities,  
9 like the schools on the reservation, that do  
10 not even begin to meet basic standards of  
11 public health and safety.

12 For years we have tried to get the  
13 federal government to make these schools safe,  
14 but the federal government has failed to do

15       so. Consequently every day that our children  
16       go into these federal facilities, they are at  
17       risk due to mold, improper heating, cooling,  
18       and other basic facilities and maintenance  
19       deficiencies.

20               To have the federal government now  
21       come in and tell us that federal government is  
22       going to oversee our facilities for health and  
23       safety standards is beyond ironic. It is  
24       offensive. We also object to these  
25       regulations because they are, in our view,

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1       contrary to federal law by requiring a tribe  
2       to undertake an unfunded mandate. These  
3       proposed regulations would require all tribes  
4       to expand resources for a legal opinion  
5       regarding eligibility of land where the  
6       casinos are now located to be used for gaming  
7       under IGRA.

8               This legal opinion would be  
9       required regardless of the need for such an  
10       opinion. This will come at a significant  
11       expense for the tribes, and in our case would  
12       be completely unnecessary. The boundaries of  
13       the Standing Rock Sioux Tribe are well  
14       established as a matter of federal law and our  
15       casinos are located on trust lands within our  
16       reservation. We should not have to expend our

17       limited resources on an attorney opinion to  
18       prove that point.

19               If there are instances where  
20       facilities are not properly located on Indian  
21       lands as defined under IGRA, the NIGC should  
22       seek to remedy those particular instances.  
23       But requiring every tribal government to  
24       provide a legal opinion as to the tribe's land  
25       status is overreaching and unnecessary.

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1               Because the proposed regulations  
2       are a major and costly infringement on tribal  
3       sovereignty, and in most instances completely  
4       unnecessary, the Standing Rock Sioux Tribe  
5       would strongly urge the NIGC to completely  
6       withdraw these proposals at this time.

7               Thank you for the opportunity to  
8       present my tribe's views on these very  
9       important issues."

10              Mr. Chairman, you know, in  
11       reviewing some of the regulations, not  
12       everybody fully understand the whole intent of  
13       IGRA, I'm sure. Not every member on our  
14       reservation understands what IGRA is all  
15       about. The end result, Mr. Chairman, is when  
16       there is an assistance that comes down to the  
17       community, that's where they see how IGRA's

18 final product would be for them to benefit  
19 from.

20 Our feelings are that when we  
21 start saying we are going to have to jump  
22 through the same hoops to relicense our  
23 facility under 559-3 every year, we are going  
24 to be having to spend for an opinion on that.  
25 That seems to be an unnecessary expense that

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1 we are looking at.

2 The other portion of the  
3 definition in dealing with Class II gaming,  
4 what's that called, it's a fancy word you guys  
5 put in there. Electromechanism.

6 CHAIRMAN HOGEN: Something like  
7 that.

8 MR. FOUL BEAR: It sounds like  
9 it's from Star Wars or something. I don't  
10 know how you guys come up with that one  
11 either. But I know that there are some  
12 popular games out there that are Class II that  
13 are used by a lot of tribes that seem to be  
14 keeping them going. As stated in my opinion  
15 or the letter here that it would seem those  
16 more popular games, then, are going to be  
17 pulled back under the guise of more stringent  
18 regulations, not giving those tribes that  
19 opportunity to understand that.

20 Under the hearings portions that  
21 passed -- I guess you do have a commission  
22 formed, the tribal working committee formed at  
23 the NIGC.

24 CHAIRMAN HOGEN: We have an  
25 advisory committee.

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1 MR. FOUL BEAR: Advisory  
2 committee. In reading up on that it sounds  
3 like that committee is in opposition to a lot  
4 of these regulations being proposed, too. So,  
5 in recognition of what's being printed as  
6 stating that they are in opposition to it, I'm  
7 hoping that the Commission would consider  
8 Standing Rock's stance and kind of pull these  
9 regulations back at this point until we really  
10 do have a case that would need it. It seems  
11 like -- I mean, that's kind of what we have  
12 been reviewing so far.

13 Mr. Lopez?

14 MR. LOPEZ: I want to thank you  
15 for you this opportunity, too. And also I  
16 guess for comments, you know, we had -- in '03  
17 we had Class II regulations within our  
18 ordinance. And it was told that that portion  
19 of Class II was taken out of our ordinance.  
20 I'm not sure who all was familiar with that.

21 Phil, if you remember that or not. That Class  
22 II chapter was withdrawn out of our tribal  
23 ordinance. I guess our question is are we  
24 going to be allowed, then, to resubmit that so  
25 that our own government can regulate that

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1 under our own standards and so forth?

2 Mainly it's our desire, then,  
3 that, you know, the federal government in  
4 these policy challenges would just recognize  
5 that tribal sovereignty in government of our  
6 own facilities and our own machines and so  
7 forth.

8 And so, you know, at one time we  
9 had the groundwork laid out for us to do that.  
10 And just for reference I think it was -- for  
11 reference purposes it was chapter 7 in our  
12 tribal gaming ordinance that was withdrawn.  
13 It was in 198 A back in '03 that that part of  
14 our ordinance was actually withdrawn.

15 We would be prepared to resubmit  
16 that for our ordinance change this fall, and  
17 we want to see that come to be part of our  
18 ordinance again, as our own commissioner and  
19 tribal inspectors would be able to manage our  
20 regulations under that guideline.

21 So we're prepared to do that. And  
22 I guess we would also -- the idea of an



23 appeals process is something that we need to  
24 take a look at, so that if we do disagree,  
25 tribes do disagree with the classifications of

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1 the machines, we will be able to sit down and  
2 go through that process.

3 Just that we don't -- the event  
4 that just happened to us that you are not  
5 familiar with, we have submitted an appeal on  
6 your decision and there is no process for  
7 followup. We want to see that take place in  
8 the regulations.

9 So, is there going to be  
10 opportunity for that?

11 CHAIRMAN HOGEN: Okay. Well, you  
12 have raised a couple of questions. And before  
13 I forget them, let me respond to those that I  
14 remember.

15 I'm trying to recall back in '03  
16 how some of this stuff came together. I know  
17 that on the South Dakota side, South Dakota  
18 permits gambling at Deadwood slot machines,  
19 blackjack, and poker, and tribes wrote  
20 compacts to permit that to happen on their  
21 reservations in South Dakota. And then  
22 somebody figured out that poker is Class II.  
23 We don't have to compact with the State of

24 South Dakota for that. We can do that outside  
25 the compact.

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1 And there was a management  
2 contract. And there was an issue about  
3 whether the management contract was going to  
4 apply to Class II or Class III. And part of  
5 that is significant, because we do different  
6 background investigations for the Class II  
7 compacts than we do for those that are just  
8 exclusively Class III.

9 But, in any event, we stand ready  
10 any time to consider an amendment to your  
11 tribal gaming ordinance. And I think it's  
12 good for all tribes now and then,  
13 periodically, to look at their tribal gaming  
14 ordinance and see if there are things that  
15 might be modernized or smoothed out. In that  
16 connection we have published a model gaming  
17 ordinance. I'm sure it won't fit every tribe  
18 for every situation. But if you are going to  
19 to go through this revision process, you might  
20 want to look at that as well. You might see  
21 some good ideas there.

22 But we will sure turn that around,  
23 hopefully, quickly, if you sent us an  
24 amendment.

25 In connection with an opportunity

1 to appeal a decision, let's assume that these  
2 proposed regulation regarding classifications  
3 go into effect, kind of the model that's set  
4 up there is if a tribe wanted to play a Class  
5 II machine, they and their vendor would take  
6 that machine to an independent laboratory the  
7 NIGC has licensed, and they would -- the lab  
8 would test it against these standards.

9 If they said, "This meets all the  
10 standards. You can play this as Class II,"  
11 you could use that on your floor. They would  
12 send us a copy of that opinion as well. We  
13 would look at it. If we agreed, and I think  
14 we would agree in most cases, they would be  
15 good to go and there wouldn't be any problem.

16 If we disagreed, we would say,  
17 "Hold up. That doesn't really meet the Class  
18 II standards," and then the vendor and the  
19 tribe could appeal that to the National Indian  
20 Gaming Commission, in effect appeal the  
21 chairman's decision to the full commission.

22 The full commission could say,  
23 "No, Chairman. You have got it wrong. The  
24 machine is okay." End of story. Or they  
25 could say, "Yes, Chairman, you are right.

1       That doesn't meet the standard."

2                       At that point it would be a final  
3       agency decision and the tribe could -- and the  
4       vendor could sue us under the Administrative  
5       Procedures Act and challenge that and have an  
6       independent court, then, decide whether we  
7       were right or wrong. You would get your  
8       hearing on that.

9                       So we tried to build that process  
10      into these proposed regulations. We have  
11      heard some suggestions and comments about how  
12      we might improve that or modify that. But I  
13      think it is important that there be due  
14      process for tribes throughout the process.

15                      MR. LOPEZ: Okay. I guess also in  
16      that tribal ordinance, I'm also just not  
17      familiar with why it was -- why it was  
18      completely withdrawn out of our ordinance,  
19      other than that IGRA didn't have that  
20      governance in the act itself.

21                      And so, you know, I guess what  
22      really we would like to say is that, you know,  
23      we had that established, but yet the  
24      Commission asked us to withdraw it. Not being  
25      familiar with what had taken place, you know,

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1       in '03, can you tell us why that was

2 recommended?

3 CHAIRMAN HOGEN: I can't.

4 Michael, is this --

5 MS. COLEMAN: I might be able to  
6 remember. I think -- well, let me tell you  
7 what our process is first. When an ordinance  
8 comes in the chairman has directed us to look  
9 at the ordinances first and foremost to see if  
10 there is a reason to disapprove. Because the  
11 act requires us to disprove if it's not  
12 consistent with the Indian Gaming Regulatory  
13 Act. Then we have to disprove it.

14 So what he wants us to do is look  
15 at it first. And if we think the chairman is  
16 going to have to disprove it, then we contact  
17 the tribe in order to give them an opportunity  
18 to change the ordinance so that it won't have  
19 to be disproved.

20 As I remember, that's what  
21 happened with the tribe. And if I remember  
22 correctly it was because the definitions,  
23 Class II definitions were not consistent with  
24 the Indian Gaming Regulatory Act in our  
25 belief.

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1 But Michael Gross, who is the  
2 attorney who deals with all of the issues in

3       that region, I don't think actually dealt with  
4       that particular issue.

5                   MR. GROSS:  No.  It was before I  
6       came on board.

7                   MS. COLEMAN:  He can give you his  
8       card and he can pull the file for you and tell  
9       you exactly what the situation is and answer  
10      any questions you have on it.

11                  MR. LOPEZ:  Okay.  Well, I sure  
12      appreciate that, you know, just to familiarize  
13      yourself with that, because -- we want to, you  
14      know, be able to handle that knowing that we  
15      have the permission and the manpower for that  
16      government governing that regulation that it  
17      will just be there.

18                  Do you need any -- do you need any  
19      reference points for where that ordinance is  
20      or what was withdrawn out of the ordinance?

21                  MR. GROSS:  I don't think so,  
22      because we keep all of the ordinance files by  
23      themselves.  So all I will need to do is go  
24      back to Standing Rock's ordinances and  
25      recreate, see what it says.  But if I do have

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1       any -- or if I do have questions, I will call  
2       you right away.

3                   MR. FOUL BEAR:  Mr. Chairman, I  
4       guess we're getting close to your time.  I see

5       you are looking at your watch, so it must be  
6       time to quit here.

7                   CHAIRMAN HOGEN:  It's getting  
8       close to the noon hour, too.

9                   MR. FOUL BEAR:  This  
10       government-to-government thing we are always  
11       talking about, you know, the tribes in the  
12       past with the Bureau of Indian Affairs or with  
13       anybody else, they would say government-to-  
14       government relationship.  Right now it seems  
15       like we are working really good with the state  
16       in North Dakota when it comes to  
17       government-to-government relationships and  
18       recognizing each other.

19                   I have been to several, several  
20       government-to-government relationship,  
21       consultations with the Government,  
22       specifically the Bureau of Indian Affairs, and  
23       the Office of Special Trustee.  What the  
24       Office of Special Trustee wanted to do is  
25       present to the tribes a couple of years ago

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1       called a consultation.

2                   In their draft, proposed  
3       regulations.  And all the tribes that showed  
4       up spoke in opposition.  In reality, what came  
5       out of it was the same draft regulations that

6       were printed, were reprinted and made into,  
7       basically, adopted by the house or whoever to  
8       become part of the law or regulations f.

9               That's a concern we have as a  
10       tribe. We're hoping that other tribes  
11       recognize the sovereignty issues should be  
12       kept in place.

13               North Dakota is one of the states  
14       that did ban smoking in public places as did  
15       the state of Washington. And we as a tribe  
16       haven't had a reason to ban it, more or less,  
17       if you want to say it. We haven't had it as a  
18       public health issue. So we are hoping that  
19       this consultation does hold true to its  
20       meaning.

21               The licensing portion, every year  
22       this regulation is going to be imposing upon  
23       tribes that they have to reestablish with an  
24       opinion. And B of 559.3b of that states  
25       annually an attorney's opinion on a

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1       certification of the facility.

2               I think -- my belief is that we  
3       put something down solid on the ground, it's  
4       going to stay there and it's not going to move  
5       every year, you know. So I'm hoping that this  
6       regulation draft here recognizes those tribes  
7       that do have that.



8 I state that because I just  
9 recently lost an elder in our tribe who was a  
10 strong advocate that our tribe, with the  
11 treaties we have in place, that the government  
12 should still be recognizing those treaties, no  
13 matter which branch comes forward to work with  
14 us.

15 We're not one of these tribes that  
16 we are disemboweled and thrown to the wolves  
17 back in the day and then try to reestablish  
18 ourselves by making a claim to land wherever  
19 it may be. So I'm hoping the Commission,  
20 along with the advisory group you are working  
21 with recognizes that. There are tribes that  
22 have been out here, established, and from what  
23 I was told initially, IGRA was developed to  
24 help those tribes. And since then, when it  
25 was thought of, nobody thought of the

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1 historical layouts of some of the people that  
2 were tribes back in the day. Now those tribes  
3 are coming forward. With what's happening  
4 there, they are opposing those regulations  
5 and, I guess, laws on these tribes that are  
6 out in the midwest, treaty tribes.

7 With that, Mr. Chairman, I would  
8 like to thank you for your time today,

9 Commission Members for listening, and  
10 wholeheartedly, I hope you guys consider our  
11 input.

12 CHAIRMAN HOGEN: We will certainly  
13 do that. Thank you for coming all the way  
14 from North Dakota to speak with us here in  
15 Oklahoma. You are absolutely right. There  
16 are places where this Indian land issue is  
17 much less problematic. Just because there is  
18 a problem one place, we shouldn't impose the  
19 same solution on everybody else.

20 Although, what we intended with  
21 respect to that proposal regarding licensing  
22 is to just gather that information, not apply  
23 new requirements. Just, you know, if God  
24 forbid there was a fire at Grand River or  
25 Prairie Nights in the middle of the night,

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1 your phone rings and my phone rings, and they  
2 want to know what happened, you and I would be  
3 to say, "This is the fire code that protected  
4 Grand River, you know, the rules that were in  
5 place. This is the date there was a  
6 certification, they complied with those rules.  
7 Not NIGC's rules, but the rules Tribes just  
8 identify and apply.

9 Similarly, with respect to the  
10 opinion regarding whether its Indian lands, I

11 don't think it would take Bill Perry or  
12 whoever the tribe might employ ten minutes to  
13 say, "These are Indian lands, because they are  
14 held in trust on the Standing Rock  
15 Reservation, which was created in 1858 or  
16 whatever.

17 MR. FOUL BEAR: '73.

18 CHAIRMAN HOGEN: And that's pretty  
19 much the end of story. You just do that once.  
20 When you license it again, you just attach the  
21 opinion and it's there in the file. And if  
22 there's ever any argument whether or not  
23 that's indian land you say, "Right here is the  
24 proof that it is."

25 So, but we will take seriously

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1 what you have said. We will try not to  
2 infringe on your sovereignty, but try to  
3 follow the mandates that congress gave us  
4 under the Indian Gaming Regulatory Act.

5 So, thank you very much.

6 MR. FOUL BEAR: Since you brought  
7 that point up, I have got one more question.  
8 Anyways, as far as the measurement for  
9 adequate and inadequate, how is NIGC going to  
10 make that determination, or whether it's going  
11 to be used for a measuring device to consider

12       adequate or inadequate when it comes down to  
13       the --

14                       CHAIRMAN HOGEN:   That won't be any  
15       different than it is right now.   If we thought  
16       that there was a practice at a Standing Rock  
17       gaming facility that put life and limb in  
18       danger, if someone was in imminent jeopardy,  
19       we can take action.   We can do that now  
20       without any new regulation.

21                       We leave it up to the tribe to, as  
22       the Indian Gaming Regulatory Act requires, to  
23       protect the environment, health, and public  
24       safety in the construction and operation of  
25       your gaming facilities.

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1                       If the tribe fails to address a  
2       situation, if they put chains on all the exit  
3       doors or something like that, we probably  
4       would respond.   But we can do that now.   And  
5       there was a time when NIGC thought about  
6       coming out with regulations saying how wide  
7       should the exit do be and so forth, and wisely  
8       decided that's best left to the tribes.

9                       But we will only step in if we  
10       think there is some glaring, you know,  
11       disaster that might be impending.   And rather  
12       than do something first, we will ask the tribe  
13       to fix it, and only if they ignore us would we

14 take that action.

15 MR. LOPEZ: I did have one  
16 question when we go off the record.

17 CHAIRMAN HOGEN: Okay. Well,  
18 let's then conclude the consultation session  
19 and have a further discussion.

20 (Proceedings concluded.)

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1 C E R T I F I C A T E

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4 STATE OF OKLAHOMA )  
 ) SS:  
5 COUNTY OF OKLAHOMA )

6 I, Trena K. Bloye, Certified Shorthand  
7 Reporter for the State of Oklahoma, certify that the  
8 foregoing transcript of proceedings taken by me in  
9 stenotype and thereafter transcribed is a true and  
10 correct transcript of the proceedings; that they  
11 were taken on August 9, 2006, at the Cox Convention  
12 Center, Oklahoma City, State of Oklahoma; that I am  
13 not an attorney for nor a relative of any said  
14 parties, or otherwise interested in the event of

15 said action.

16                   IN WITNESS WHEREOF, I have hereunto set my  
17 hand and seal of office on this the 11th day of  
18 August, 2006.

19

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21

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Trena K. Bloye  
Certified Shorthand Reporter  
for the State of Oklahoma

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